

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 140 of 1998

AND

COMPANY PETITION No 142 of 1998

WITH

COMPANY PETITION No 141 of 1998

AND

COMPANY APPLICATION No 421 of 1998

AND

COMPANY APPLICATION No 416 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE Sd/

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1. Whether Reporters of Local Papers may be allowed

to see the judgements? Yes

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

GUJARAT AMBUJA COTSPIN LTD.

Versus

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Appearance:

1. COMPANY PETITION No. 140 & 142 of 1998
MRS SWATI SOPARKAR for Petitioner
MR JAYANT PATEL for Respondent No. 1

2. COMPANY PETITION No 141 of 1998
MR SN SOPARKAR for Petitioner
MR BT RAO for Respondent No. 1

3. COMPANY APPLICATION No. 416 of 1998

MR SM SINGHI for Petitioner
MR SN SOPARKAR for Respondent

4. COMPANY APPLICATION No 421 of 1998

MR MA BHATT for petitioner
MRS SWATI SOPARKAR for Respondent

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 17/12/98

ORAL JUDGEMENT

Gujarat Ambuja Cotspin Limited and Gujarat Ambuja Proteins Limited have respectively filed Company Petition Nos.140 of 1998 and 142 of 1998 seeking sanction of this court to the Scheme of Amalgamation presented along with these two petitions whereby these two companies intend to merge into Gujarat Ambuja Exports Limited. Gujarat Ambuja Exports Limited has filed Company Petition No.141 of 1998 seeking the approval to the very Scheme. Mrs.Soparkar has appeared for the petitioners in Company Petitions Nos.140 of 1998 and 142 of 1998 and Mr.S.N.Soparkar has appeared in Company Petition No.141 of 1998.

2. The Scheme enclosed with these petitions is based on a commercial decision arrived at by the persons in-charge of the companies concerned, and two independent chartered accountants, namely, M/s. Talati & Talati and M/s. Kantilal Patel & Co. have examined this Scheme and the exchange ratio has been fixed on the basis of their reports. This issue is also examined by the chartered accountants appointed by the Official Liquidator, namely, Mr.K.K.Patel & Company who have also found nothing objectionable to the fixation of the exchange ratio.

3. These petitions first came up for consideration before this court (Balai, J.) on 1.7.1998 when they were admitted and notices were directed to be published in newspapers. Thereafter, all the three petitions have come up for hearing before me. Pursuant to the notices, two applications have been filed objecting to the Scheme of Amalgamation. Company Application No.416 of 1998 is filed by one Mr. R.N.Jalan. Mr.Singhi appearing for this applicant has stated that he does not press this application any more. The other application being Company Application No.421 of 1998 is filed by one Mr.Hitesh Dave. Mr.M.A.Bhatt has appeared for him. Apart from these two parties which have filed specific applications, the following persons have sent their written objections:

1. Mr. H.V.Jayaram
2. Mr. Brijendra Kumar Mittal
3. Mr. D.J.Shah
4. Mr. M.A.Joshi
5. Mr. B.K.Bapat
6. Ms. Poonam Poddar
7. Mr. R.N.Goyal

They have, however, not chosen to remain present when the matters are taken up for hearing.

4. I have heard Mrs.Soparkar for the two merging companies as well as Mr. Soparkar for the company in which these two companies are going to be merged as well as Mr.Bhatt for the objector in Company Application No.421 of 1998. Mr.Bhatt has principally raised three objections: Firstly, service as directed has not been effected. There is no dispute that as far as his client is concerned, he has been duly notified and that is how he is appearing. However, as far as the others are concerned, Mrs. Soparkar has filed an affidavit-in-reply affirmed by Mr.V.K.Gupta, who is the Chairman of Gujarat Ambuja Cotspin Limited. In this affidavit it is stated that, approximately 1,80,000 shareholders were to be notified. It is also stated in the affidavit that the hearing of the petition has been advertised in as many as 22 newspapers and separate individual notices were also despatched through post and a certificate given by the postal authorities is enclosed with the reply. Mr. Bhatt states that the person concerned who had given the certificate does not have the authority to give such certificate. He has, however, not been able to point out any provision to make that submission good. The certificate has been given on behalf of the Sr. Superintendent of Railway Mail Service. The person concerned is a responsible officer of the Railway Mail Service and there is no reason to doubt his authority when nothing has been shown to the contrary. The second submission has been that this particular company has not been listed on Delhi Stock Exchange. In that behalf a letter issued by the Delhi Stock Exchange Association Ltd. dated 27.3.1997 addressed to the Secretary of the Gujarat Ambuja Proteins Ltd. has been produced on record which calls upon the company concerned to pay the annual listing fees. Such a letter would not be written unless the company is a member of the concerned Stock Exchange. The third submission of Mr.Bhatt is that there has been illegal transfer of money from the unpaid dividend account and that this amount ought to have gone to the Central Government. Mr.Soparkar on the instructions from

Mr.Kaushik Kona who is the President (Finance and Taxation Department) of Gujarat Ambuja Cotspin Ltd. states that this allegation is denied and the amount has been transferred to the Central Government. He is also prepared to give full particulars in this behalf to Mr.Bhatt who seeks them from Mr.Soparkar.

5. The objections raised by Mr.Jayaram and others are principally about the exchange ratio and the merits of the particular scheme. As far as these aspects are concerned, it is for the majority of the shareholders and the concerned chartered accountants to look into as held by the Hon.'ble Supreme Court in the case of MIHEER H. MAFATLAL v. MAFATLAL INDUSTRIES LTD. reported in AIR 1997 Supreme Court 506. In para 39 of this judgment it has been stated that, it is for the equity shareholders acting bona fide in the interest of their class as a whole to accept a particular scheme and once the exchange ratio is worked out by a recognized firm of chartered accountants who are experts in the field of valuation and if no mistake can be pointed out in the said valuation, it is not for the court to substitute its exchange ratio, especially when the same has been accepted without demur by the overwhelming majority of the shareholders.

6. These petitions are for amalgamation of two companies into the third company. In view of what is stated above, there is no substance in the objections and there is no reason why these petitions should not be allowed. Though these petitions are being allowed, by way of abundant caution it is clarified that this order will not come in the way of the appropriate revenue authorities in looking into the objections which have been raised by the objector and taking appropriate actions in accordance with law for which the transferee company shall always remain accounted for. This approach has also been taken by another single Judge of this Court in Company Petition No.17 of 1996 concerning RATNAMANI ENGINEERING LTD. For the reasons stated above, Company Application No.421 of 1998 is rejected. Company Application No.416 of 1998 is not pressed. Company Petitions Nos.140 of 1998 and 142 of 1998 which are filed by the merging companies as also Company Petition No.141 of 1998 which is by the transferee company seeking sanction to this scheme are allowed.

7. The two transferor companies would pay costs of Rs.2,500/- each to Mr.Jayant Patel representing the Central Government in those two petitions and the transferee company shall pay Rs.2,500/- to Mr.B.T.Rao appearing for the Central Government in the petition

filed by the transferee company. Mr. Bhatt applies for stay of this order stating that he would like to prefer an appeal. Mr.Soparkar says that the objection is only by one shareholder as against some 4 lacs shareholders who have agreed to the scheme of amalgamation. In the circumstances, the request of Mr.Bhatt is rejected.

(KMG Thilake)

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